

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Telephone Number:

Refer Reply To:
CC:INTL:B06
PLR-140998-08
Date:
March 17, 2009

Legend

Month 1 =

Year 1 =

Parent =

Taxpayer =

CFO =

Accountant =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

State 1 =

Dear :

This responds to your letter dated Date 1, requesting a ruling that grants Taxpayer an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file Form 4876-A (“Election to be Treated as an Interest Charge DISC”), including the shareholder consent statement, in accordance with Temp. Treas. Reg. § 1.921-1T(b)(1) and Treas. Reg. § 1.992-2(a)(1)(i), thereby allowing Taxpayer to file a Form 4876-A that will be treated as timely filed within 90 days after the beginning of its first taxable year.

The rulings given in this letter are based on facts and representations submitted by Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Facts

Parent is a domestic company. At the conclusion of an initial meeting on Date 2 between Accountant and Parent’s chief financial officer, CFO, Accountant advised CFO and the shareholders of Parent that Parent would benefit from using an IC-DISC. The shareholders unanimously consented for Parent to form a wholly-owned subsidiary domestic corporation that would elect to be an IC-DISC and for Parent to engage Accountant to assist with IC-DISC compliance issues.

Accountant further advised CFO on Date 2 that Accountant would need to be provided with Taxpayer’s tax identification number and certificate of incorporation in order to prepare the required IC-DISC election form. Parent incorporated Taxpayer under State 1’s law on Date 3. Within two weeks after Date 2, Accountant received a copy of the requested tax identification number and the incorporation documentation for Taxpayer.

Accountant then began preparation of a package of IC-DISC related documents, including the Form 4876-A, a DISC commission and services agreement, and a paid fee bill in connection with the initial retainer that had been sent to Accountant by Parent following execution of the original engagement letter (the “IC-DISC Documents”). On Date 4, Accountant left a package with CFO containing the IC-DISC Documents and a cover letter outlining the filing instructions for the IC-DISC election and execution of the DISC commission and services agreement. These instructions indicated that Form 4876-A needed to be filed by Date 5.

Accountant believed that the Form 4876-A had been executed and filed in a timely manner with the Internal Revenue Service as instructed in the cover letter described above. Taxpayer and Accountant worked on creating IC-DISC accounting procedures for Taxpayer. While discussing the monthly IC-DISC commission expense with CFO during a telephone conversation on Date 6 (several days after Date 5), CFO asked Accountant whether there was anything else associated with the IC-DISC that needed to be done once the accounting procedures had been set up. Accountant reminded

CFO at that time that the package left with CFO during the meeting on Date 4 included the Form 4876-A and instructions for filing it by Date 5. CFO had no memory of ever having seen the actual election form, nor any memory of it having been signed or filed. CFO immediately checked the file where all of the IC-DISC documents were supposed to be located, but CFO could not find a Form 4876-A. CFO does not know what happened to the Form 4876-A.

Immediately upon discovering the failure of Taxpayer to make the DISC election, Accountant prepared a ruling request under Treas. Reg. § 301.9100-3 and filed it with the IRS several days after Date 6, along with a duly executed copy of the previously prepared, but never filed, Form 4876-A.

Law and Analysis

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Section 992(b)(1)(B) provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temporary Treasury Regulation § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A. A corporation electing to be treated as an IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year. The rules contained in Treas. Reg. § 1.992-2(a)(1) shall apply to the manner of making the election and the manner and form of representing shareholder consent to the election.

Treasury Regulation § 1.992-2(a)(1)(i) provides that, except as otherwise provided in paragraphs (b)(3) and (c) of that section, the election to be treated as a domestic international sales corporation shall be valid only if the consent of every person who is a shareholder of the corporation as of the beginning of the first taxable year for which such election is effective is on or attached to the Form 4876-A when filed with the service center.

Treasury Regulation § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treasury Regulation § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treasury Regulation § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interest of the Government.

In the present situation, the election described in Temp. Treas. Reg. § 1.921-1T(b)(1) is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief set forth in Treas. Reg. § 301.9100-3.

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A and the shareholder consent statement required by Temp. Treas. Reg. § 1.921-1T(b)(1) and Treas. Reg. § 1.992-2(a)(1)(i). Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election, to submit shareholder consent statements, or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). A copy of this letter ruling should be filed with the Form 4876-A and shareholder consent statements.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that written determinations may not be used or cited as precedent. Except as expressly provided herein, this ruling neither expresses nor implies any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this ruling letter.

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representative.

Sincerely,

Christopher J. Bello
Chief, Branch 6
Office of Associate Chief Counsel
(International)

cc: